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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 Clarence Wayne Dixon,
14 Petitioner,

15 vs.

16 David Shinn, et al.,
17 Respondents.
18
19

No. CV-14-258-PHX-DJH

DEATH-PENALTY CASE

20
21
22 **State Court Record**
23 **Pinal County Superior Court, No. S1100CR202200692**
24 **Record on Appeal, ROA 1-24**
25
26
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Welcome - Cary Sandman
 Last signed in on - 05/08/2022 08:11:54 PM

Case Information - S1100CR202200692

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Case Information

Description	Data
Court Level/Jurisdiction	Superior Courts
Court Location	Pinal County Superior Court
Case #	S1100CR202200692
General Case Category	Criminal
Case Category	Felony
Case Sub Category	Felony
Case Title	ST OF AZ VS DIXON

Case Parties

Side 1 Plaintiff(s)

Party Name and Contact Information	Attorney Name and Contact Information
Attorney-Party Team	
STATE OF ARIZONA	GREGORY MICHAEL HAZARD Bar # 023258 AZ
	JEFFREY W SPARKS

Side 2 Defendant(s)

Party Name and Contact Information	Attorney Name and Contact Information
Attorney-Party Team	
CLARENCE WAYNE DIXON	AMANDA C BASS Bar # 1008-H16R AL
	ERIC ZUCKERMAN Bar # 16742 UT
	CARY S SANDMAN

Side 3 Interested Party(s)

Party Name and Contact Information	Attorney Name and Contact Information
Attorney-Party Team	
COLLEEN CLASE	COLLEEN CLASE Bar # 029360 AZ

Documents

#	Filing Date	Document Title
1	5/6/2022 4:25:53 PM	RESTRICTED AUDIO AND VIDEO RECORDINGS OF COMPETENCY
2	5/6/2022 3:50:55 PM	EFILING: ORDER RE GRANT TO OBTAIN AUDIO FILE CR22692
3	5/6/2022 10:26:07 AM	EFILING: ORDER RE RESPONSE DEADLINE ON EXPEDITED MOTION FOR RECORDINGS CR22692
4	5/6/2022 9:03:57 AM	EFILING: Motion to Produce Audio and Video re Recordings of Hearing
5	5/6/2022 9:03:57 AM	EFILING: Proposed Order
6	5/4/2022 2:48:40 PM	#RESTRICTED TRANSCRIPTS
7	5/4/2022 2:23:52 PM	MISC
8	5/3/2022 11:57:06 PM	EFILING: RULING THAT DEFENDANT IS COMPETENT TO BE EXECUTED, pursuant to A.R.S.13-4021 et seq. CR22692
9	5/3/2022 9:00:00 AM	Created from Form CR ME Minute Entry
10	4/29/2022 6:13:05 PM	EFILING: Notice of Filing Disclosure of Exhibits
11	4/29/2022 11:02:19 AM	EFILING: State's Notice of Disclosure of Exhibits
12	4/27/2022 7:40:21 PM	EFILING: RECONSIDERATION AND ORDER REGARDING DEFENSE MOTION TO DETERMINE COMPETENCY TO BE EXECUTED, PURSUANT TO A.R.S. 13-4021, et seq CR22692
13	4/27/2022 4:19:57 PM	EFILING: Defendant's Competency Hearing Witness List
14	4/27/2022 1:21:37 PM	EFILING: State's Notice of Disclosure of Witnesses
15	4/27/2022 9:51:15 AM	ONBASE / Miscellaneous: Exhibit(s) 4/27/2022 9:51:15 AM / Miscellaneous: Exhibit(s) 4/27/2022 9:51:15 AM
16	4/27/2022 9:51:11 AM	NOTICE OF FILING
17	4/26/2022 11:28:19 AM	EFILING: ORDER RE CASE MANAGEMENT DURING RECONSIDERATION CR22692
18	4/22/2022 2:09:18 PM	EFILING: ORDER RE STIPULATED MOTION FOR DISCLOSURE CR22692

#	Filing Date	Document Title
19	4/22/2022 11:48:18 AM	EFILING: Response to Pre-Hearing Memorandum Re: Constitutionally Required Definition of "Mentally Incompetent to be Executed" and Standard for Proving Same
20	4/22/2022 8:41:17 AM	EFILING: Stipulated Motion for Disclosure Schedule
21	4/22/2022 8:41:17 AM	EFILING: Proposed Order
22	4/19/2022 7:40:56 PM	EFILING: ORDER CR22692 .
23	4/18/2022 4:21:23 PM	EFILING: Motion to Exceed Page Limit
24	4/18/2022 4:21:23 PM	EFILING: Proposed Order
25	4/18/2022 4:03:01 PM	EFILING: Reply in Support of Motion to Determine Mental Competency to be Executed
26	4/18/2022 3:32:09 PM	EFILING: Pre-Hearing Memorandum re: Constitutionally Required Definition of "Mentally Incompetent to be Executed" and Standard for Proving
27	4/15/2022 2:33:01 PM	#RESTRICTED TRANSCRIPT OF SCHEUDLING CONFERENCE
28	4/13/2022 2:43:07 PM	EFILING: Notice of Appearance
29	4/13/2022 1:59:10 PM	EFILING: Crime Victim's Notice of Appearance
30	4/13/2022 11:20:38 AM	EFILING: Response to Motion to Determine Mental Competency to be Executed
31	4/12/2022 6:21:01 PM	EFILING: ORDER CR22692
32	4/12/2022 3:30:00 PM	Created from Form CR ME Motion for Rule 11 Exam
33	4/12/2022 2:00:26 PM	EFILING: Motion to Associate Counsel Pro Hac Vice
34	4/12/2022 2:00:26 PM	EFILING: Proposed Order
35	4/12/2022 2:00:26 PM	EFILING: Exhibit Index
36	4/12/2022 2:00:26 PM	EFILING: Exhibit 1
37	4/12/2022 2:00:26 PM	EFILING: Exhibit 2

#	Filing Date	Document Title
38	4/12/2022 2:00:26 PM	EFILING: Exhibit 3
39	4/12/2022 2:00:26 PM	EFILING: Exhibit 4
40	4/12/2022 2:00:26 PM	EFILING: Exhibit 5
41	4/12/2022 2:00:26 PM	EFILING: Exhibit 6
42	4/11/2022 3:35:23 PM	EFILING: NOTICE OF MARICOPA COUNTY SUPERIOR COURT AND ARIZONA SUPREME COURT FILINGS
43	4/8/2022 4:32:13 PM	ORDER: ORDER RE: REVIEW OF DEFENSE MOTION TO DETERMINE COMPETENCY TO BE EXECUTED
44	4/8/2022 9:39:13 AM	ONBASE / MOTION: Motion 4/8/2022 9:39:13 AM / MOTION: Motion 4/8/2022 9:39:13 AM
45	4/8/2022 9:39:13 AM	MOTION: MOTION TO EXCEED PAGE LIMIT

IN THE SUPERIOR COURT
PINAL COUNTY, STATE OF ARIZONA

Date: May 6, 2022

THE HONORABLE ROBERT CARTER OLSON

IN RE THE MATTER OF:

STATE OF ARIZONA

PLAINTIFF

AND

CLARENCE WAYNE DIXON

DEFENDANT

S1100CR202200692

**ORDER RE:
GRANT TO OBTAIN
AUDIO FILE**

The Defendant having filed a *Motion to Produce Audio and Video Recordings of Hearing*; and the State having promptly notified the Court's judicial assistant that it had no objection and would be filing no response, and good cause appearing,

IT IS HEREBY ORDERED granting the above-referenced motion with respect to the audio recording, known internally as the Liberty system, for the entire competency hearing on May 6, 2022.

IT IS FURTHER ORDERED that the Clerk of the Court shall receive in the Court file a copy of the digital file on media, and the Court's judicial assistant shall promptly email a link to the parties for the digital file(s).

The Court **FINDS** that the only video system is maintained by Court Security and is not included in this Order, since it is primarily a visual record and any audio recording is far inferior to that available from the Liberty System. Due to practical and security considerations, good cause has not been shown to grant its release.



eSigned by Olson,Robert 05/06/2022 15:32:39 nux8nHG0

Emailed/Mailed/Distributed Copy:

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OFFICE DISTRIBUTION:
JUDGE/OLSON

IN THE SUPERIOR COURT
PINAL COUNTY, STATE OF ARIZONA

Date: May 6, 2022

THE HONORABLE ROBERT CARTER OLSON

IN RE THE MATTER OF:

STATE OF ARIZONA

PLAINTIFF

AND

CLARENCE WAYNE DIXON

DEFENDANT

S1100CR202200692

**ORDER RE:
RESPONSE DEADLINE ON
EXPEDITED MOTION FOR
RECORDINGS**

This morning the Court's judicial assistant received a copy of the Defendant's *Motion to Produce Audio and Video Recordings of Hearing*, which is not yet visible in the Court's electronic case file, and that motion requests expedited consideration,

IT IS HEREBY ORDERED that any response to this motion must be filed today before 2:30 PM (MST) with a copy of any response emailed directly to this Court's Judicial Assistant, since the Court may rule on this motion at any time after this deadline.

IT IS FURTHER ORDERED that the Court's judicial assistant shall provide a courtesy copy of the Defendant's motion in the distribution of this Order, since the motion may still be in a stage of processing by the Clerk and distribution may not yet have occurred.



eSigned by Olson,Robert 05/06/2022 10:21:14 datrqCC-

Emailed/Mailed/Distributed Copy:

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OFFICE DISTRIBUTION:
JUDGE/OLSON

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3 District of Arizona
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5 *Amanda C. Bass (AL Bar No. 1008H16R)
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15 *Admitted pro hac vice
16 Counsel for Defendant

17 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
18 **IN AND FOR THE COUNTY OF PINAL**

19 STATE OF ARIZONA,
20 Plaintiff,
21 vs.
22 CLARENCE WAYNE DIXON,
23 Defendant.

Pinal County Case No.
S1100CR202200692

Maricopa County Case No. CR2002-
019595

Arizona Supreme Court Case No. CR-08-
0025-AP

**MOTION TO PRODUCE AUDIO
AND VIDEO RECORDINGS OF
HEARING**

(Capital Case)

(Expedited Ruling Requested)

(Hon. Robert Carter Olson)

24
25
26 Clarence Wayne Dixon, through undersigned counsel, hereby respectfully moves
27 the Court for the immediate production of all audio and video recordings of the evidentiary
28 hearing in this matter that occurred on May 3, 2022. This request is supported by the

1 accompanying memorandum of points and authorities.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 On May 3, 2022, this Court held an evidentiary hearing to determine whether Mr.
4 Dixon is competent to be executed. On the same day, this Court ruled Mr. Dixon is
5 competent to be executed.

6 Mr. Dixon intends to file in the Arizona Supreme Court a petition for special action
7 review of this Court's decision pursuant to A.R.S. § 13-4022(I). There is also a likely
8 possibility of federal habeas litigation related to the Court's adjudication of Mr. Dixon's
9 federal constitutional right not to be executed while mentally incompetent in violation of
10 the Eighth Amendment to the United States Constitution.

11 On May 5, 2022, Mr. Dixon requested an audio and video copy of the May 3
12 evidentiary hearing. (Ex. 1.) He was informed by court administration that "when a court
13 reporter is present their transcripts are the official record. In that instance, electronic
14 recordings are an internal resource and as a practice, the court does not release them.
15 Please file a motion with the court if appropriate." (*Id.*)

16 Mr. Dixon thus respectfully requests that all audio and video recordings of the
17 evidentiary hearing in this matter be immediately produced to his counsel. Since receiving
18 the transcripts, Mr. Dixon has noticed several critical errors in the afternoon transcript of
19 the hearing. Given the fact that one witness testified via WebEx video and the potential
20 consequences of any errors in the official transcript include the unconstitutional loss of
21 Mr. Dixon's life, Mr. Dixon asserts that good cause exists for the production of all audio
22 and video recordings of the hearing that occurred on May 3, 2022.

23 //

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25 //

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28 //

1 Respectfully submitted this 6th day of May, 2022.

2 Jon M. Sands
3 Federal Public Defender
4 District of Arizona

5 Cary Sandman
6 Amanda C. Bass
7 Eric Zuckerman
8 Assistant Federal Public Defenders

9 s/ Eric Zuckerman
10 Counsel for Defendant
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Certificate of Service

I hereby certify that on May 6, 2022, I filed the foregoing Motion to Produce Audio and Video Recordings of the Hearing with the Pinal County Clerk's Office using the Court's e-filing system. Copies of the foregoing were electronically mailed on May 6, 2022 to:

Jeffrey L. Sparks
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Colleen Clase
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s/ Jessica Golightly
Assistant Paralegal
Capital Habeas Unit

EXHIBIT 1

From: Alberts, Paula <palberts@courts.az.gov>
Sent: Thursday, May 5, 2022 10:10 AM
To: Jessica Golightly <Jessica_Golightly@fd.org>
Cc: Alberts, Paula <palberts@courts.az.gov>
Subject: RE: Dixon - S1100CR202200692

Good morning Ms. Golightly,

I have been advised that when a court reporter is present their transcripts are the official record. In that instance, electronic recordings are an internal resource and as a practice, the court does not release them. Please file a motion with the court if appropriate.



Paula Alberts
Administrative Specialist
Arizona Superior Court
Pinal County
Phone: 520.866.5752
Email: palberts@courts.az.gov

From: Jessica Golightly <Jessica_Golightly@fd.org>
Sent: Thursday, May 05, 2022 8:51 AM
To: Alberts, Paula <palberts@courts.az.gov>
Cc: Angela Fairchild <Angela_Fairchild@fd.org>
Subject: Dixon - S1100CR202200692

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Ms. Alberts,
I was given your name by Ms. Herrera. Would I be able to get a audio and video copy of the May 3 hearing in the Dixon case? Please let me know if there is a fee to obtain and I will work on getting that prepared for you.
Thank you for your help,

Jessica Golightly
Assistant Paralegal
Federal Public Defender
Capital Habeas Unit
850 W. Adams St., Suite 201
Phoenix, AZ 85007
602-382-2816 (main)
602-382-2701 (direct)

1
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6
7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF PINAL**

9 STATE OF ARIZONA,

10 Plaintiff,

11 v.

12 CLARENCE WAYNE DIXON,

13 Defendant.

Pinal County Case No. S1100CR202200692

Maricopa County Case No. CR2002-019595

Arizona Supreme Court Case No. CR-08-
0025-AP

[Proposed] Order

(Capital Case)

(Hon. Robert Carter Olson)

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16
17
18 Pending before this Court is the Motion to Produce Audio and Video Recordings of
19 Hearing.

20 **IT IS ORDERED** that the Motion to Produce Audio and Video Recordings of
21 Hearing is **GRANTED**.

22 Court Administration shall produce all audio and video recordings from the May 3,
23 2022 competency hearing in the above captioned case to counsel for Defendant forthwith.

24
25 **IT IS SO ORDERED** this ____ day of _____, 2022.

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The Honorable Robert Carter Olson
Pinal County Superior Court

Can't Retrieve Document Information for case # S1100CR202200692 Docket # 8014799 The requested document is not available electronically.

ARIZONA SUPERIOR COURT, PINAL COUNTY

Clerk of the Superior Court, Pinal County)
)
 State of Arizona)
)
 Plaintiff)
)
 Clarence DIXON)
)
 Defendant)
)

EXHIBIT LIST

CASE NO. CR202200692
 HON. Judge R. Olson
 ACTION: «Hearing»
 DATE: 5/2/2022
 TRIAL DATE: 5/3/2022
 JDMT DATE: _____
 APL EXP. DATE: _____

PLT ATTY: Gregory Hazard
 ADD: _____

DEF. ATTY: Amanda Bass
 ADD: _____

P	D	DESCRIPTION OF ITEM	ID	EV	OBJ	RLSD	F	NF	FLMD DATE	SENT	NOT SENT	Use
	1	Curriculum Vitae of Lauro Amezcua-Patino, M.D.										
	2	Addendum to March 31, 2022 Report, April 25, 2022, and Psychiatric Evaluation Report, March 31, 2022 by Lauro Amezcua-Patino, M.D.										
	3	Psychiatric Examination Report by Otto Bendheim, M.D., September 2, 1977										
	4	Psychiatric Examination Report by Maier Tuchler, M.D., September 2, 1977										
	5	Arizona Department of Corrections Psychological Report, April 23, 1981										
	6	Neuropsychological-Psychological Evaluation Report by John Toma, Ph.D., June 30, 2012										
	7	Psychiatric Evaluation Report by Lauro Amezcua-Patino, M.D., September 7, 2012										
	8	Arizona State Hospital Physician's Orders Page										
	9	Minute Entry Verdict, State v. Dixon, No. 98107 (Maricopa Cnty. Super. Ct. Jan. 5, 1978)										
	10	Arizona Medical Board License Profile of Lauro Amezcua-Patino										
	11	Schizophrenia Diagnostic Criteria from the DSM-5										
	12	Petition for Writ of Habeas Corpus, Dixon v. Murphy, No. CV94041734 (Pinal Cnty. Super. Ct. Feb. 3, 1994)										
	13	Letters to Ninth Circuit Judge Nelson and Judge Thompson, Dixon v. Stewart, No. 97-16849 (9th Cir. Nov. 6, 1997)										
	14	Petition for Post-Conviction Relief, State v. Dixon, No. 11654 (Coconino Cnty. Super. Ct. Oct. 1, 2001)										
	15	Can & Do the Courts Collude by Clarence W. Dixon, 2001										
	16	Complaint Against a Judge (J. Michael Flournoy), March 12, 2002										
	17	Reply to State's Response to Petition for Review, State v. Dixon, No. 1 CA-CR 02-0203-PR (Ariz. Ct. App. Apr. 29, 2002)										

RLF

CASE NO. C2202200692

Page 2 of 2

Released:

Appeal Use

P	D	DESCRIPTION OF ITEM	ID	EV	OBJ	RLSD	F	NF	FLMD DATE	SENT	NOT SENT
	18	Clarence Dixon Letter to the Commission on Judicial Conduct, June 12, 2002									
	19	Draft Motion to Suppress DNA Evidence, May 2003									
	20	Motion Three to Reconsider Denial of Change of Judge, State v. Dixon, No. CR 2002-019595 (Maricopa Cnty. Super. Ct. June 27, 2006)									
	21	Petition for Writ of Habeas Corpus, Dixon v. Shinn, No. HC-21-0007 (Ariz. Apr. 15, 2021)									
	22	Second Response to State's Reply to First Response, Dixon v. Shinn, No. HC-21-0007 (Ariz. May 20, 2021)									
	23	Petition for Writ of Certiorari, Dixon v. Arizona, No. 21-6820 (U.S. Nov. 12, 2021)									
	24	Reply to State's Response, Dixon v. Arizona, No. 21-6820 (U.S. Feb. 18, 2021)									
	25	Complaint Against a Judge (Andrew Gould), April 11, 2022									
	26	Complaint Against a Judge (Ann Timmer), April 11, 2022									
	27	Complaint Against a Judge (Kathryn King), April 11, 2022									
	28	Complaint Against a Judge (William Montgomery), April 11, 2022									
	29	Clarence Dixon Letter to the Commission on Judicial Conduct, April 16, 2022									
30		Curriculum Vitae - Dr. Carlos J. Vega									
31		Psychological Evaluation - Dr. Carlos Vega									
	32	Letter from Def to the Executive Director Elliott									
	33	Defendant's Dept of Corrections medical records									
	34	Arizona State Hospital Psychological Report dated 10-6-1977									
	35	Police report dated 6-5-1977									
	36	Schizophrenia Spectrum/other Psychotic Disorders									
	37	Unmet need for mental health care in schizophrenia: An overview of literature; newspaper from a first person story									
	38	Antisocial Personality Disorder									
	39	Evaluating competency for execution after madison Alzheimer									

5/4/2022
JAN/2022

IN THE SUPERIOR COURT
PINAL COUNTY, STATE OF ARIZONA

Date: May 3, 2022

THE HONORABLE ROBERT CARTER OLSON

<p>IN RE THE MATTER OF:</p> <p>STATE OF ARIZONA</p> <p>PLAINTIFF</p> <p>AND</p> <p>CLARENCE WAYNE DIXON</p> <p>DEFENDANT</p>	<p>S1100CR202200692</p> <p>RULING THAT DEFENDANT IS COMPETENT TO BE EXECUTED, pursuant to A.R.S. § 13-4021, <i>et seq.</i></p> <p>(Capital Case)</p>
--	--

On this date, this Court presided over a competency for execution hearing; and at the conclusion of the hearing, this matter was taken under advisement,

Now, therefore,

The Court **FINDS** that Defendant filed his *Motion to Determine Competency to be Executed* in the county where the Defendant is located; the request for an examination was timely; and this Court has jurisdiction to decide this question, pursuant to *A.R.S. § 13-4021, et seq.*

The Court further **FINDS** that the Defendant made the minimum required showing that reasonable grounds exist for this examination, within the meaning of *A.R.S. § 13-4022(C)* and as otherwise required by *Ford v. Wainwright*, and that the Defendant, therefore, has a right under Arizona and Federal law to a full, fair, and adequate hearing, including the opportunity to present evidence, examine witnesses, and make arguments, which is now completed.

Without conceding the constitutionality of the standard set forth in *A.R.S.* § 13-4021(B), the parties stipulated at the start of the hearing to apply the following standard when assessing competency in this action:

whether Clarence Wayne Dixon's mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution.

Finally, as a matter of judicial economy (in light of the certain review of this decision by a higher court), the parties have consented to the Court making duplicate findings as to the standard of proof that is borne by the Defendant, pursuant to *A.R.S.* § 13-4022(F), which requires clear and convincing evidence, and the alternative standard of a preponderance of the evidence, which may arguably be required by Fourteenth and Eighth Amendments.

With respect to the hearing,

The evidence presented at the hearing consisted of 39 exhibits, admitted by stipulation, and the testimony of Dr. Lauro Amezcua Patiño, M.D., FAPA, and Dr. Carlos Vega, Psy.D., both of whom were qualified as experts and without objection, pursuant to Evidence Rule 702, and the expert witnesses examined the Defendant but presented conflicting opinions. Accordingly, their opinions are judged just as any other testimony, and the Court may give any such testimony as much credibility and weight as the Court thinks it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the hearing.

As a threshold determination, under both standards of proof, the Court **FINDS** that the Defendant has a mental disorder or mental illness of schizophrenia, albeit that this mental disorder or illness can fall within a broad spectrum, which the Defendant has shown through the testimony of Dr. Patiño and multiple exhibits. This determination, however, does not decide the question of competency. Rather, this threshold determination requires the Court to further consider whether Defendant's mental state is so distorted by this mental illness that he lacks a rational understanding of the State's rationale for his execution.

In an effort to meet this burden, the Defendant relies heavily on his "NAU legal challenge" to show that he lacks a rational understanding. Specifically, for several decades, the Defendant has immovably claimed that the NAU police department in some way initiated, without lawful authority, an investigation into a sexual assault

case in Flagstaff during 1985. And as a result, the Defendant argues that he is entitled to the suppression or reversal of everything that happened to him as a result of the claimed unlawful action by the NAU police department, including reversal of that conviction, nullification of the subsequent authority vested in the Department of Corrections to take a DNA sample from the Defendant while incarcerated for the 1985 case, and suppression of the resulting DNA evidence and reversal of his conviction in this case for which a warrant of execution is now pending.

On the one hand, this is an elegant theory that could make all of his legal problems go away; on the other hand, the chance of success with this argument was highly improbable (if not non-existent), yet the Defendant remains unbending in his commitment to this argument, whether due to hubris, poor judgment, a longshot strategy for lack of a better argument, or a delusion, as Defendant claims.

In support of his argument, Dr. Patiño opines that the NAU legal challenge is evidence of delusion as a result of his schizophrenia, noting the Defendant's claims that the judges and attorneys have conspired to wrongly deny his claim, as well as claiming that judges are denying his claims to protect the State or law enforcement from embarrassment or that judges are engaging in an "extra-judicial" killing of the Defendant, as well as other and cumulative evidence that was presented at the hearing.

For example, in Exhibit 2, Dr. Patiño expands on these observations with the following remarks from his interview on August 25, 2021: "They are not disagreeing with me; they just want to kill me for murder. They are ignoring the law." And later, on March 10, 2022, the Defendant communicated a different message, essentially that his claims were denied due to bias: "When questioned about the judicial system's rationale for denying his claims, Clarence stated that he did not think the judges, attorneys for the state, or his own attorneys were plotting against him, but stated his belief that this reflected that they are, "Not against me but have a firm and decided philosophy that the law enforcement should always be backed up." The Defendant went on to opine that this was a result of Arizona's judges coming from the "prosecutor services bar."

In simplest terms, when considered as a whole, the testimony and evidence about the NAU legal challenge is conflicting and ambiguous, includes inflammatory remarks and reflective observations by the Defendant, but it provides a window into arguably delusional thinking concerning the Defendant's rational understanding of the judiciary's rationale for denying his favored legal theory. The Court rejects Defendant's assertion that this is dispositive of the issue before this Court, but it

clearly provides some insight into the Defendant's rational understanding in regard to the State's rationale for his execution.

As for the remaining evidence presented at hearing, there were persuasive observations that were also offered by Dr. Vega, including the Defendant's statements that were memorialized by Dr. Vega, which provide insight into the rational understanding by the Defendant of the State's rationale for his execution, such as the Defendant reflecting that, if he had a memory of the murder, he would have a sense of relief on his way to his execution.

Furthermore, it is undisputed that the Defendant's intelligence is not less than average and probably classified in a high-average range. Dr. Patiño testified as to the different characteristics with schizophrenia that are typical for persons of low intelligence versus high intelligence, including the fact that persons of higher intelligence can have higher levels of functioning. And the Court notes that the Defendant has shown sophistication, coherent and organized thinking, and fluent language skills in the pleadings and motions that he has drafted and that were entered into evidence as exhibits, combined with the fact that he previously earned an income from other inmates for drafting pleadings for hire, although the Court is mindful that Dr. Patiño opines and cautions that such observations do not preclude his conclusion of incompetence.

Finally, although the Defendant claims that he has no memory of the murder that is the subject of this warrant of execution, which may be the result of a blackout, the Court notes that there is no evidence of dementia or a related impairment that would otherwise implicate an Eighth Amendment consideration.

Now, after considering and weighing the substantial but conflicting testimony and evidence that was admitted at the hearing, and after considering the arguments of counsel, and being satisfied that a thorough and detailed examination has been completed by two qualified, expert witnesses, and being satisfied that the record adequately informs the decision about whether the Defendant can rationally understand the State's rationale for his death sentence and scheduled execution,

For this, and other good cause,

The Court **FINDS** that Clarence Wayne Dixon is presumed to be competent to be executed, pursuant to *A.R.S. § 13-4022(F)*.

The Court **FINDS** that Clarence Wayne Dixon has NOT met his burden to rebut this presumption, by clear and convincing evidence, to show that his mental state is

so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution.

As a matter of judicial economy, although it is a much closer question,

The Court further **FINDS** that Clarence Wayne Dixon has NOT met his burden to rebut this presumption, by a preponderance of the evidence, to show that his mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution.

IT IS HEREBY ORDERED that the warrant of execution in this cause is NOT stayed, pursuant to *A.R.S. § 13-4022(G)*.

IT IS FURTHER ORDERED that no matters remain pending; this is a final judgment; and closing this file.

A handwritten signature in black ink, appearing to be 'RO' with a stylized flourish, positioned above a horizontal line.

eSigned by Olson,Robert 05/03/2022 23:51:41 e1ow8ksn

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JUDGE/OLSON

Filed on 5/4/2022 10:22:07 AM

IT IS FURTHER ORDERED admitting Exhibits #1 through #31 are admitted this date.

Further discussions are held regarding Defense Counsel Pre-Trial Briefs relating to the Standard of Proof and Burden of Proof.

Upon stipulation of counsel,

FURTHER ORDERED the Panetti Standard shall be the standard by which the Court will be determining the competence of the Defendant.

Opening statements are presented to the Court.

Witness, Dr. Lauro Amezcua-Patino, is called forward, sworn by the Clerk and presents testimony.

9:56 a.m. Recess.

10:01 a.m. Reconvene in the Courtroom. All parties previously present are now present.

The Court advises that the Court will be taking a brief recess to allow IT to fix the technical difficulties the Court is having at this time.

10:16 a.m. Reconvene in the Courtroom. All parties previously present are now present.

Witness, Dr. Lauro Amezcua-Patino, presents further testimony. Exhibit #32 is admitted, testimony continues.

The Court notes that Counsel for the State has invoked the rule, specifically under Evidence Rule 615C, the Court FINDS it is appropriate for both the expert witnesses, the Defense and the State to have access to the testimony of the other, so they may be present, listen in or briefed by counsel for purposes of addressing that; however, this is only pertaining to the two expert witnesses as essential to the presentation of the cases that are being presented to both sides; however, if there are any other witnesses that are going to be called in rebuttal or otherwise, the rule shall be invoked to any other witnesses.

FURTHER ORDERED directing the Court Reporters covering this matter to provide expedited transcripts to counsels, preferable by email; so that they have it right away, as well as a copy be filed with the Court. All copies shall be billed through Pinal County Court Administration.

11:45 a.m. Recess.

1:23 p.m. Reconvene in the Courtroom. All parties previously present are now present.

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Witness, Dr. Lauro Amezcua-Patino, presents further testimony and is excused, however is subject to recall.

1:55 p.m. Recess.

1:58 p.m. Reconvene in the Courtroom. All parties previously present are now present.

Witness, Dr. Carlos Vega, is called, sworn by the Clerk and presents testimony.

The Court FINDS that the Dr. Carlos Vega is a qualified expert to testify as to his investigation report in this matter.

Witness, Dr. Carlos Vega and presents further testimony. Exhibit #33 is admitted, testimony continues. Exhibit #34 is admitted, testimony continues. Exhibit #35 is admitted, testimony continues. Exhibit #36 is admitted, testimony continues. Exhibit #37 is admitted, testimony continues.

3:40 p.m. Recess.

3:56 p.m. Reconvene in the Courtroom. All parties previously present are now present.

Witness, Dr. Carlos Vega, presents further testimony. Exhibit #38 is admitted, testimony continues. Exhibit #39 is admitted, testimony continues. Witness is excused.

4:17 p.m. Witness, Dr. Lauro Amezcua-Patino is excused from the Courtroom.

Closing arguments are presented to the Court.

FURTHER ORDERED taking this matter Under Advisement this date.

Mailed/distributed copy: 5/4/2022
ERIC ZUCKERMAN

AMANDA BASS

CARY SANDMAN

COLLEEN CLASE

Office Distribution:
ATTORNEY GENERAL/SPARKS/HAZARD
COURT REPORTERS
VICTIMS ASSISTANCE

Filed on 5/4/2022 10:22:07 AM

JUDGE/OLSON

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17 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
18 **IN AND FOR THE COUNTY OF PINAL**

19 STATE OF ARIZONA,
20
21 Plaintiff,
22
23 vs.
24
25 CLARENCE WAYNE DIXON,
26
27 Defendant.

Pinal County Case No.
S1100CR202200692

Maricopa County Case No. CR2002-
019595

Arizona Supreme Court Case No. CR-08-
0025-AP

**NOTICE OF FILING DISCLOSURE
OF EXHIBITS**

(Capital Case)

(Hon. Robert Carter Olson)

28 Pursuant to this Court's April 22, 2022 order granting the Stipulated Motion for
Disclosure Schedule, Defendant Clarence Wayne Dixon provides notice that he has
disclosed to counsel for the State the exhibits he may offer in his case in chief at the May
3, 2022 hearing.

1 Respectfully submitted this 29th day of April, 2022.

2 Jon M. Sands
3 Federal Public Defender
4 District of Arizona

5 Cary Sandman
6 Amanda C. Bass
7 Eric Zuckerman
8 Assistant Federal Public Defenders

9 s/ Eric Zuckerman
10 Counsel for Defendant
11
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Certificate of Service

I hereby certify that on April 29, 2022, I filed the foregoing Notice of Disclosure of Exhibits with the Pinal County Clerk's Office using the Court's e-filing system. Copies of the foregoing were electronically mailed on April 29, 2022 to:

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s/ Jessica Golightly
Assistant Paralegal
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10 **SUPERIOR COURT OF ARIZONA**
11 **COUNTY OF PINAL**

12 STATE OF ARIZONA,
13
14 Plaintiff,
15
16 -VS-
17 CLARENCE WAYNE DIXON,
18 Defendant.

Pinal County Superior Court
No. S1100CR202200692

Maricopa County Superior Court
No. CR 2002-019595

Arizona Supreme Court
No. CR 08-0025-AP

19 **STATE'S NOTICE OF DISCLOSURE**
20 **OF EXHIBITS**

Hon. Robert Carter Olson

[CAPITAL CASE]

24 Pursuant to this Court's April 22, 2022 order granting the Stipulated Motion
25 for Disclosure Schedule, the State provides notice that it has disclosed to counsel
26 for Dixon that the exhibits the State may offer in its case in chief consist of Dr.
27 Vega's report and CV, which the State filed on the Court's docket on Tuesday,
28 April 26, 2022.

1 RESPECTFULLY SUBMITTED this 29th day of April, 2022.

2 Mark Brnovich
3 Attorney General
4

5 /s/ Jeffrey L. Sparks
6 Acting Chief Counsel
7 Capital Litigation Section

8 Gregory Hazard
9 Senior Litigation Counsel

10 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I electronically filed the foregoing with the Clerk of the Pinal County Superior Court by using the Court's eFiling Online System.

Copies of the foregoing were electronically mailed this date to:

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Attorney for Crime Victim

/s/ Liz Gallagher

SEO02S7Q0E1JND

IN THE SUPERIOR COURT
PINAL COUNTY, STATE OF ARIZONA
Date: April 27, 2022

THE HONORABLE ROBERT CARTER OLSON

<p>IN RE THE MATTER OF:</p> <p>STATE OF ARIZONA</p> <p style="text-align:right">PLAINTIFF</p> <p>AND</p> <p>CLARENCE WAYNE DIXON</p> <p style="text-align:right">DEFENDANT</p>	<p style="text-align:center">S1100CR202200692</p> <p>RECONSIDERATION AND ORDER REGARDING DEFENSE MOTION TO DETERMINE COMPETENCY TO BE EXECUTED, pursuant to A.R.S. § 13-4021, <i>et seq.</i></p> <p>(Capital Case)</p>
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On April 25, 2022, the Arizona Supreme Court accepted jurisdiction of a *Petition for Special Action* filed by the State, thereby resulting in an order to “[remand] to the superior court with instructions to reconsider its ruling [on April 8, 2022] in light of the response and reply.”

The Court has accordingly reconsidered its prior ruling, as instructed by the supreme court, including considering the *Response to Motion to Determine Mental Competency to be Executed*, filed by the State on April 13, 2022, and the *Reply in Support of Motion to Determine Mental Competency to be Executed*, filed by the Defendant on April 18, 2022, as follows:

VENUE

The Court **AFFIRMS** that Defendant filed his *Motion to Determine Competency to be Executed* in the county where the Defendant is located, as required by A.R.S. § 13-4022(A), and the Court notes that the State does not dispute that the motion was filed in the correct venue.

PROCEDURE UPON RECEIPT OF MOTION

The Court respectfully **AFFIRMS** its interpretation that the procedural statute, *A.R.S. § 13-4022(C)*, establishes an event-driven procedure that requires the superior court to make two threshold determinations “**on receipt of a motion** for examination of competency,” [emphasis added].

Such that when a specific event occurs, i.e. the receipt of the motion, the superior court must determine if the motion is timely, and the superior court must determine if the “motion” presents reasonable grounds for the requested examination. This statute does not authorize or invite the superior court to wait for a response or reply, nor does it authorize the superior court to defer consideration, and this statute specifically directs the superior court to look to the motion to determine if reasonable grounds exist for the requested examination; it makes no reference to looking to any responsive pleading when making this determination.¹

In applying this statutory construction, the Court acknowledges that it did not wait for a response and reply before issuing its prior ruling and finding that reasonable grounds were shown in the motion for an examination, which appears to be the clear requirement of the statute. On reflection, however, the Court agrees with the State that § 13-4022(C) does not direct (or authorize) the superior court to take the next step of granting a hearing without waiting for a response and reply (and perhaps waiting for the reports on the examination, which have now been received).

Accordingly, on reconsideration, the Court agrees that its initial decision to grant a hearing was premature, and that initial decision will therefore be reconsidered *de novo* and addressed below.

--

¹ The Court notes that the phrase “on receipt of a” is found 133 times in *Arizona Revised Statutes* and, without reviewing each example, seems to universally direct action upon the event of receiving some item or document, which also appears to be the legislative construct of § 13-4022(C).

The Court also observes that this type of event-driven language is not found in the more common mental health examination in Criminal Rule 11, but a proceeding under § 13-4021, *et seq.*, is obviously different and uniquely time-sensitive, due to the narrow 35 day time-period between issuance of a warrant of execution and the date of execution, pursuant to Criminal Rule 31.23(c). This informs the obvious rationale for the statute to require action “on receipt,” as described above, in order to complete the required procedure in the available time, to avoid the superior court frustrating the timeframe in the supreme court’s warrant of execution.

TIMELINESS

The Court **AFFIRMS** that the instant motion is timely, within the meaning of *A.R.S. § 13-4024(A)*, and the Court notes that the State does not dispute that the motion was timely.

EXAMINATIONS

The Court **AFFIRMS** that reasonable grounds were shown by the Defendant in his motion for an examination, but the Court now makes the additional finding that reasonable grounds remain for an examination after consideration of the response and reply, such that the Court **AFFIRMS** its prior ruling to order an examination.

Specifically, the Court **FINDS** that the Defendant satisfied the minimum required showing that reasonable grounds exist for the requested examination, within the meaning of *A.R.S. § 13-4022(C)* and as otherwise required by *Ford v. Wainwright*, as was evidenced by the report by Dr. Lauro Amezcua-Patino, M.D., a clinical and forensic psychiatrist, who prepared an unsworn statement dated March 31, 2022, just eight days before the instant motion was filed, which opines that the Defendant currently lacks a rational understanding of the State's reasons for his execution, and that same statement offers a diagnosis, a discussion about Defendant's understanding, and references the doctor's conclusion that certain legal theories embraced by the Defendant are delusional, *Motion to Determine Competency to be Executed*, Exhibit 9.

The State's Response largely repeats the procedural and mental health history provided in Defendant's motion and, essentially, argues that these issues have been raised before, that prior courts have rejected Defendant's claims of incompetence, and that there is no meaningful evidence that the Defendant's condition has worsened or changed. This same argument was a significant observation in Justice Thomas' dissent² in *Panetti v. Quarterman*, 551 U.S. 930, 962–63, 127 S. Ct. 2842, 2863–64, 168 L. Ed. 2d 662 (2007), but this position was not embraced by the majority view, which this Court is obligated to follow.

Pursuant to *A.R.S. § 13-4021* and the Eighth Amendment, the superior court is charged with determining whether the Defendant is mentally incompetent, based on the Defendant's competence at this time to be executed by the State of Arizona, such that this inquiry is not answered by the determination of Defendant's

² The context of the observations of Justice Thomas were in relation to addressing the barrier to a second or successive *habeas* under *The Antiterrorism and Effective Death Penalty Act of 1996* (AEDPA).

competence decades ago, for which a different standard and test were also applied, upon which the State unconvincingly frames its argument to show that the Defendant is currently competent to be executed.

In simplest terms, the State has offered no contemporary professional opinion to inform this question or rebut the opinion of Dr. Amezcua-Patino, nor did it admittedly have any obligation to do so at this time; but in the absence of such a showing, the only opinion from the current era was provided by Defendant, and that showing meets the minimum requirement to find that reasonable grounds exist for the requested examination.

For these reasons, following reconsideration in light of the response and reply, the Court respectfully finds no basis to depart from its initial order for examinations, and **IT IS HEREBY ORDERED** affirming the Court's prior ruling, pursuant to § 13-4022(C), and granting Defendant's request for examinations.

HEARING

The Court having already conceded *supra* that a hearing should not have been granted upon receipt of the motion, the Court now turns to the question of whether to grant a hearing to the Defendant after having received the response and reply, and the Court noting that it has also now received conflicting opinions from Dr. Lauro Amezcua-Patino and Dr. Carlos Vega.

Good cause appearing, the Court **FINDS** and **AFFIRMS** that the Defendant has a right under Arizona and Federal law to a full, fair, and adequate hearing before the Court, including the opportunity to present evidence, examine witnesses, and make arguments, as previously ordered, which shall commence on Tuesday, May 3, 2022, at 9:00 A.M.

To be clear, the finding that the Defendant has made the requisite showing for an examination, and that the Defendant has a right to a hearing, is not a determination or adjudication of any issue on the merits at the hearing.

Now, therefore, and following reconsideration as ordered by the supreme court, **IT IS ORDERED** affirming the Court's prior ruling on April 8, 2022, except as modified, supplemented or explained by this ruling.



eSigned by Olson,Robert 04/27/2022 19:20:21 GCIEPdmC

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15 *Counsel for Defendant*

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17 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
18 **IN AND FOR THE COUNTY OF PINAL**

19 STATE OF ARIZONA,

20 Plaintiff,

21 vs.

22 CLARENCE WAYNE DIXON,

23 Defendant.

Pinal County Case No.
S1100CR202200692

Maricopa County Case No. CR2002-
019595

Arizona Supreme Court Case No. CR-08-
0025-AP

Defendant's Competency Hearing
Witness List

(Capital Case)

(Hon. Robert Carter Olson)

24 Clarence Wayne Dixon, through undersigned counsel, hereby provides the Court
25 with notice of witnesses he intends to call in his case-in-chief¹ at the May 3, 2022
26 competency hearing.

27
28 ¹ Mr. Dixon reserves the right to call rebuttal witnesses after the State rests its case.

Dr. Lauro Amezcua-Patiño will testify consistent with his report and addendum that Mr. Dixon is unable to form a rational understanding of the State's reasons for his execution. Dr. Amezcua-Patiño's CV has already been disclosed as an attachment to his report, which was submitted to this Court on April 25, 2022.

Respectfully submitted this 27th day of April, 2022.

Jon M. Sands
Federal Public Defender
District of Arizona

Cary Sandman
Amanda C. Bass
Eric Zuckerman

s/ Eric Zuckerman
Counsel for Defendant

Certificate of Service

I hereby certify that on April 27, 2022, I electronically filed the foregoing Defendant's Competency Hearing Witness List with the Pinal County Superior Court Clerk's Office by using the Court's eFiling system. Copies of the foregoing were electronically mailed this date to:

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s/ Jessica Golightly
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4 ACTING CHIEF COUNSEL
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5 GREGORY HAZARD
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10 **SUPERIOR COURT OF ARIZONA**
11 **COUNTY OF PINAL**

12 STATE OF ARIZONA,
13 Plaintiff,
14
15 -VS-
16 CLARENCE WAYNE DIXON,
17 Defendant.

Pinal County Superior Court
No. S1100CR202200692

Maricopa County Superior Court
No. CR 2002-019595

Arizona Supreme Court
No. CR 08-0025-AP

18 **STATE'S NOTICE OF DISCLOSURE**
19 **OF WITNESSES**

20 *Hon. Robert Carter Olson*

21 **[CAPITAL CASE]**
22
23

24 Pursuant to this Court's April 22, 2022 order granting the Stipulated Motion
25 for Disclosure Schedule, the State hereby discloses its list of witnesses and a brief
26 account of the subject matter of each witness' testimony as well as a CV for any
27 expert witness who will be presented at the hearing.
28

1 The State intends to call the following witnesses at the hearing scheduled to
2 begin on May 3:

- 3 • Dr. Carlos Vega. Dr. Vega is expected to testify to the subject matter
4 included in his report, which the State filed on the docket in this case
5 on April 26, 2022, with its Notice of Filing Expert Report. The State
6 has already disclosed Dr. Vega's CV by attaching it to the Notice of
7 Filing Expert Report.

8 RESPECTFULLY SUBMITTED this 27th day of April, 2022.

9 Mark Brnovich
10 Attorney General

11
12 /s/ Jeffrey L. Sparks
13 Acting Chief Counsel
14 Capital Litigation Section

15 Gregory Hazard
16 Senior Litigation Counsel

17 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

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/s/ Liz Gallagher

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FILED
REBECCA PADILLA
CLERK OF SUPERIOR COURT

2022 APR 27 AM 9:51

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BY _____
DEPUTY

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15 *Counsel for Defendant*

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17 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
18 **IN AND FOR THE COUNTY OF PINAL**

19 STATE OF ARIZONA,

20 Plaintiff,

21 vs.

22 CLARENCE WAYNE DIXON,

23 Defendant.

Pinal County Case No.
S1100CR202200692

Maricopa County Case No. CR2002-
01959

Arizona Supreme Court Case No. CR-08-
0025-AP

**NOTICE OF FILING
SUPPLEMENTAL EXPERT REPORT
RE: MENTAL COMPETENCY TO
BE EXECUTED**

(Capital Case)

(Hon. Robert Carter Olson)

24
25
26
27 Pursuant to this Court's April 12, 2022 order appointing Dr. Lauro Amezcua-
28 Patino to evaluate Mr. Dixon's competency to be executed, Clarence Wayne Dixon,

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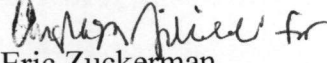
MNV

1 through undersigned counsel, hereby provides the Court with notice of Dr. Amezcua-
2 Patino's supplemental report. (Ex. 21.) Mr. Dixon offers this report in support of his rights
3 under A.R.S. § 13-4022 and the Eighth and Fourteenth Amendments not to be executed
4 while mentally incompetent and to a hearing¹ on the merits of his claim under *Ford v.*
5 *Wainwright*, 477 U.S. 399 (1986), and *Panetti v. Quarterman*, 551 U.S. 930 (2007).

6 Respectfully submitted this 25th day of April, 2022

7 Jon M. Sands
8 Federal Public Defender
9 District of Arizona

10 Cary Sandman
11 Amanda C. Bass
12 Eric Zuckerman
13 Assistant Federal Public Defenders

14 
15 s/ Eric Zuckerman
16 Counsel for Defendant
17
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25 ¹ On April 25, 2022, the Arizona Supreme Court directed this Court to "reconsider
26 its ruling in light of the response and reply" filed by the State and Mr. Dixon in connection
27 with Mr. Dixon's motion to determine his mental competency to be executed. Order, *State*
28 *v. Hon. Robert Carter Olson*, No. CV-22-0092-SA (Ariz. Apr. 25, 2022). If this Court is
inclined to reconsider its grant of a hearing on the merits of Mr. Dixon's claim that he is
mentally incompetent to be executed, he respectfully asks the Court to order oral argument
prior to vacating the May 3, 2022 hearing previously ordered in this matter.

Certificate of Service

I hereby certify that on April 25, 2022, I electronically filed the foregoing Notice of Filing of Supplemental Expert Report re: Mental Competency to be Executed with the Pinal County Clerk's Office by using the Court's eFiling system. Copies of the foregoing were electronically mailed this date to:

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IN THE SUPERIOR COURT
PINAL COUNTY, STATE OF ARIZONA

Date: April 26, 2022

THE HONORABLE ROBERT CARTER OLSON

<p>IN RE THE MATTER OF:</p> <p>STATE OF ARIZONA</p> <p>PLAINTIFF</p> <p>AND</p> <p>CLARENCE WAYNE DIXON</p> <p>DEFENDANT</p>	<p>S1100CR202200692</p> <p>ORDER RE: CASE MANAGEMENT DURING RECONSIDERATION</p>
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Yesterday, April 25, 2022, the Arizona Supreme Court accepted jurisdiction of the Special Action and “[remanded this matter] to the superior court with instructions to reconsider its ruling in light of the response and reply.”

This Court is in the process of reviewing the filings in this proceeding and reconsidering its prior ruling, as ordered; but due to the short time remaining before the scheduled execution date, and noting that the supreme court did not vacate the currently scheduled hearing, and to avoid any confusion,

IT IS HEREBY ORDERED affirming (at this time) all prior orders and the competency hearing scheduled on Tuesday, May 3, 2022, at 9:00 A.M., and these orders shall remain in effect until reconsideration is completed and a further order is issued by this Court to affirm, modify or rescind its prior ruling.



eSigned by Olson,Robert 04/26/2022 11:23:25 dk51RVGC

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6
7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF PINAL**

9 STATE OF ARIZONA,

10 Plaintiff,

11 v.

12 CLARENCE WAYNE DIXON,

13 Defendant.

Pinal County Case No. S1100CR202200692

Maricopa County Case No. CR2002-019595

Arizona Supreme Court Case No. CR-08-
0025-AP

**Order Re: Stipulated Motion for
Disclosure**

(Capital Case)

(Hon. Robert Carter Olson)

14
15
16
17
18 Pending before this Court is the Stipulated Motion for Disclosure Schedule. Good
19 cause appearing,

20 **IT IS ORDERED** that the Stipulated Motion for Disclosure Schedule is
21 **GRANTED.**

22 On **April 27, 2022**, each party shall disclose a list of witnesses and a brief account
23 of the subject matter of each witness' testimony.

24 On **April 27, 2022**, each party shall disclose a CV for any expert witness who will
25 be presented at the hearing.

26 On **April 29, 2022**, each party shall disclose copies of any exhibits which may be
27 offered in the party's case in chief at the hearing.
28



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9 ATTORNEYS FOR PLAINTIFF

10 **SUPERIOR COURT OF ARIZONA**
11 **COUNTY OF PINAL**

12 STATE OF ARIZONA,
13
14 Plaintiff,
15
16 -VS-
17 CLARENCE WAYNE DIXON,
18 Defendant.

Pinal County Superior Court
No. S1100CR202200692

Maricopa County Superior Court
No. CR 2002-019595

Arizona Supreme Court
No. CR 08-0025-AP

**RESPONSE TO PRE-HEARING
MEMORANDUM RE:
CONSTITUTIONALLY REQUIRED
DEFINITION OF "MENTALLY
INCOMPETENT TO BE
EXECUTED" AND STANDARD
FOR PROVING SAME**

Hon. Robert Carter Olson

[CAPITAL CASE]

27 Defendant Clarence Dixon is a death row inmate with a history of violent
28 offenses against young women. In 1977, he struck a teenage girl with a metal

1 pipe, but was found not guilty by reason of insanity. *Dixon v. Ryan (Dixon III)*,
2 932 F.3d 789, 796 (9th Cir. 2019). In the early morning hours of January 7, 1978,
3 the day after being released pending civil commitment proceedings for that
4 offense, Dixon murdered ASU student Deana Bowdoin in her apartment,
5 strangling her and stabbing her multiple times. *Id.* That crime remained
6 unsolved, however, and in 1985 Dixon violently assaulted an NAU student and
7 was convicted of aggravated assault, kidnapping, sexual abuse, and four counts of
8 sexual assault. *Id.*; *see also State v. Dixon (Dixon I)*, 153 Ariz. 151 (1987).

9 In 2001, a detective compared DNA recovered from the investigation of
10 Bowdoin's 1978 murder against a national database. The profile matched
11 Dixon's, whose DNA had been collected as a result of his 1985 convictions.
12 *Dixon III*, 932 F.3d at 796; *see also State v. Dixon (Dixon II)*, 226 Ariz. 545, 548, ¶
13 4 (2011). Dixon was charged with first-degree murder and chose to represent
14 himself. *Dixon II*, 226 Ariz. at 549, ¶ 5. He was convicted of first-degree murder
15 under premeditated and felony murder theories.¹ *Id.* The jury found that he was
16 eligible for the death penalty because he had previously been convicted of a crime
17 punishable by life imprisonment and the murder was especially cruel and heinous.
18 *Id.* The jury determined that Dixon should be sentenced to death. *Id.*

19 Throughout his postconviction and federal habeas proceedings, Dixon
20 argued that his trial counsel were ineffective for failing to challenge his
21 competency to waive the right to counsel at trial and that the trial judge erred by
22 failing *sua sponte* to address his competency. These claims were uniformly
23 rejected, however, because no evidence suggested Dixon had been incompetent.
24 *See Dixon III*, 932 F.3d at 801–05.

25
26
27 ¹ The Arizona Supreme Court found that “[t]here was ample evidence from which
28 the jury could conclude that Deana had been raped,” which was the predicate
charge for felony murder. *Dixon II*, 226 Ariz. at 549, ¶¶ 9–11.

After Dixon's conviction and death sentence were upheld on direct appeal, postconviction review, and federal habeas review, the Arizona Supreme Court issued a warrant of execution, with a scheduled execution date of May 11, 2022. On April 8, 2022, Dixon filed a motion for determination of competency to be executed under A.R.S. § 13-4022, which this Court granted on the same day. At a scheduling hearing on Tuesday, April 12, 2022 this Court appointed experts to evaluate Dixon for competency to be executed: at Dixon's request the Court appointed Dr. Lauro Amezcua-Patino, a retained expert whose report Dixon had submitted in support of his motion for a competency determination, and at the State's request, Dr. Carlos Vega, a court appointed expert. Minute Entry, No. S1100CR202200692, April 12, 2022. The Court also affirmed a competency hearing to begin on May 3, 2022.

On April 18, 2022, Dixon filed a pre-hearing memorandum arguing that: 1) the definition of "mentally incompetent to be executed" set forth in A.R.S. § 13-4021(B) is unconstitutional; and 2) the clear-and-convincing standard of proof to overcome the presumption of competency to be executed in § 13-4022(F) is unconstitutional. The State does not concede that § 13-4021(B)'s definition of mentally incompetent to be executed is unconstitutional but nevertheless does not object to this Court assessing competency at the upcoming hearing under the *Panetti v. Quarterman*, 551 U.S. 930 (2007), standard: "whether a prisoner's mental state is so disordered by a mental illness that he lacks a rational understanding of the State's rationale for [his] execution." *Madison v. Alabama*, 139 S. Ct. 718, 723 (2019) (quotation omitted). However, Dixon is incorrect that the clear-and-convincing evidence standard of proof is unconstitutional, and this Court should therefore apply that standard as required by § 13-4022(F).

I. DEFINITION OF INCOMPETENCY TO BE EXECUTED.

Under § 13-4021(B), mental incompetency to be executed means "due to a mental disease or defect a person who is sentenced to death is presently unaware

1 that he is to be punished for the crime of murder or that he is unaware that the
2 impending punishment for that crime is death.” The Supreme Court has held that
3 a prisoner is incompetent to be executed when his “‘mental state is so distorted by
4 a mental illness’ that he lacks a ‘rational understanding’ of ‘the State’s rationale
5 for [his] execution.’” *Madison*, 139 S. Ct. at 723 (quoting *Panetti*, 551 U.S. at
6 958–59).

7 Dixon argues that the statutory standard requires less than the one described
8 in *Panetti*, and that it is therefore unconstitutional under the Eighth Amendment.
9 Pre-Hearing Memorandum at 3–4. The State does not concede that Arizona’s
10 definition offends the Eighth Amendment. However, to avoid a possible
11 constitutional challenge, the State agrees that this Court should apply the
12 following standard when assessing competency at the hearing: whether Dixon’s
13 “mental state is so distorted by a mental illness that he lacks a rational
14 understanding of the State’s rationale for [his] execution.” *Madison*, 139 S. Ct. at
15 723 (quotation omitted).

16 **II. THE CLEAR-AND-CONVINCING EVIDENCE STANDARD IS CONSTITUTIONAL.**

17 Under § 13–4022(F), a prisoner who is sentenced to death is “presumed
18 competent to be executed” and “may be found incompetent to be executed only on
19 clear and convincing evidence of incompetency.” Dixon argues that the clear-and-
20 convincing standard is unconstitutional, and that he should only be required to
21 prove incompetency by a preponderance of the evidence. Pre-Hearing
22 Memorandum at 4–6. The sole authority Dixon cites for this contention is *Cooper*
23 *v. Oklahoma*, 517 U.S. 348 (1996), in which the Court held that requiring a
24 defendant to prove incompetency to stand trial by clear and convincing evidence
25 violated due process because it would “allow[] the State to put to trial a defendant
26 who is more likely than not incompetent.” *Id.* at 368–69. *Cooper* is inapplicable
27 here because incompetency to stand trial implicates different interests than
28 incompetency to be executed.

1 In *Medina v. State*, 690 So.2d 1241, 1246–47 (Fla. 1997), the Florida
 2 Supreme Court rejected the same argument Dixon makes—the prisoner there
 3 asserted that a state rule requiring him to prove incompetency to be executed by
 4 clear and convincing evidence was unconstitutional under *Cooper*. The court
 5 noted that, with regard to competence to stand trial, the Supreme Court in *Cooper*
 6 “found that in weighing the interest of the defendant against the interest of the
 7 State, the defendant’s interest was substantial and the State’s interest was modest.”
 8 *Medina*, 690 So.2d at 1247; *see Cooper*, 517 U.S. at 356–65 (defendant’s
 9 fundamental right to be tried only while competent outweighs state’s interest in
 10 efficient operation of its criminal justice system). In contrast, Justices Powell and
 11 O’Connor found in *Ford v. Wainwright* that the interests of the State were much
 12 more pronounced when a prisoner asserts lack of competency to be executed:

13
 14 First, the Eighth Amendment claim at issue can arise only after
 15 the prisoner has been validly convicted of a capital crime and
 16 sentenced to death. Thus, in this case the State has a substantial and
 17 legitimate interest in taking petitioner’s life as punishment for his
 18 crime. That interest is not called into question by petitioner’s claim.
 19 Rather, the only question raised is not *whether*; but *when*, his
 execution may take place. This question is important, but it is not
 comparable to the antecedent question whether petitioner should be
 executed at all. It follows that this Court’s decisions imposing
 heightened procedural requirements on capital trials and sentencing
 proceedings do not apply in this context.

20 477 U.S. 399, 425 (1986) (Powell, J., concurring) (citations omitted); *see also id.*
 21 at 429 (O’Connor, J., concurring) (“the Due Process Clause imposes few
 22 requirements on the States in this context” of incompetency to be executed).
 23 Thus, in light of the State’s much more substantial interest when a prisoner raises
 24 the issue of incompetency to be executed versus incompetency to stand trial,
 25 *Cooper*’s holding is not applicable in this context and § 13–4022(F)’s standard is
 26 not unconstitutional.

27 A more apt analogy to incompetency to be executed is the Eighth
 28 Amendment’s prohibition against executing the intellectually disabled. *See Atkins*

1 v. *Virginia*, 536 U.S. 304, 321 (2002) (Eighth Amendment prohibits execution of
2 intellectual disabled persons). Under Arizona law, a defendant seeking to avoid a
3 capital sentence by proving intellectual disability must do so by clear and
4 convincing evidence. A.R.S. § 13-753(G). In *State v. Grell*, 212 Ariz. 516,
5 522-25, ¶¶ 30-41 (2006), the Arizona Supreme Court rejected the argument that
6 requiring a defendant to prove intellectual disability by clear and convincing
7 evidence violates constitutional standards. Like here, the defendant in that case
8 argued that *Cooper*'s holding regarding incompetency to stand trial applied to the
9 standard of proof for intellectual disability. *Id.* at 522-23, ¶ 30; *see also State v.*
10 *Escalante-Orozco*, 241 Ariz. 254, 268, ¶ 18 (2017) (declining to revisit *Grell*'s
11 holding). In addressing the defendant's claim, the court found that "[a] better
12 comparison lies between claims of [intellectual disability] as a bar to execution
13 and claims of mental incompetence as a bar to execution," which also requires
14 clear and convincing burden of proof. *Grell*, 212 Ariz. at 525, ¶ 40. The court
15 further stated that it was "aware of no case finding it violative of the Constitution
16 to require a defendant to prove incompetence to be executed by clear and
17 convincing evidence." *Id.*

18 In light of the different balance of interests in the context of incompetency
19 to be executed as opposed to incompetency to stand trial, as well as the Arizona
20 Supreme Court's decision in *Grell*, this Court should reject Dixon's argument and
21 apply § 13-4022(F)'s clear-and-convincing evidence standard at the evidentiary
22 hearing.

23 ///

24 ///

25 ///

1 RESPECTFULLY SUBMITTED this 22nd day of April, 2022.

2 Mark Brnovich
3 Attorney General
4

5 /s/ Jeffrey L. Sparks
6 Acting Chief Counsel
7 Capital Litigation Section

8 Gregory Hazard
9 Senior Litigation Counsel

10 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2022, I electronically filed the foregoing with the Clerk of the Pinal County Superior Court by using the Court's eFiling Online System.

Copies of the foregoing were electronically mailed this date to:

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/s/ Liz Gallagher

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26 Clldocket@Azag.Gov

27 Counsel for Plaintiff

28 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
IN AND FOR THE COUNTY OF PINAL

STATE OF ARIZONA,

Plaintiff,

v.

CLARENCE WAYNE DIXON,

Defendant.

Pinal County Case No. S1100CR202200692

Maricopa County Case No. CR2002-019595

Arizona Supreme Court Case No. CR-08-
0025-AP

**STIPULATED MOTION FOR
DISCLOSURE SCHEDULE**

(Capital Case)

(Hon. Robert Carter Olson)

1 This Court has scheduled an evidentiary hearing for May 3, 2022, on Clarence Wayne
2 Dixon's claim that he is incompetent to be executed. The parties have conferred and agreed
3 upon the following pre-hearing disclosure schedule:

4 **April 27, 2022:**

- 5 1. Each party shall disclose a list of witnesses and a brief account of the subject matter
6 of each witness' testimony.
7 2. Each party shall disclose a CV for any expert witness who will be presented at the
8 hearing.

9 **April 29, 2022:**

- 10 1. Each party shall disclose copies of any exhibits which may be offered in the party's
11 case in chief at the hearing.

12 The parties request the Court enter the accompanying Proposed Stipulated Scheduling
13 Order.

14 RESPECTFULLY SUBMITTED this 22nd day of April, 2022.

15 Jon M. Sands
16 Federal Public Defender

Mark Brnovich
Attorney General

17 Eric Zuckerman
18 Assistant Federal Public Defender

Jeffrey L. Sparks
Acting Chief Counsel
Capital Litigation Section
Office of the Attorney General

19
20
21 s/Eric Zuckerman
Counsel for Defendant

s/Jeffrey L. Sparks
Counsel for Plaintiff

Certificate of Service

I hereby certify that on April 22, 2022, I electronically filed the foregoing Stipulated Motion for Disclosure Schedule with the Pinal Clerk's Office by using the Court's eFiling system. Copies of the foregoing were electronically mailed this date to:

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Colleen Clase
Attorney for Leslie James
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s/ Jessica Golightly
Assistant Paralegal
Capital Habeas Unit

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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF PINAL**

9 STATE OF ARIZONA,

10 Plaintiff,

11 v.

12 CLARENCE WAYNE DIXON,

13 Defendant.

Pinal County Case No. S1100CR202200692

Maricopa County Case No. CR2002-019595

Arizona Supreme Court Case No. CR-08-
0025-AP

[Proposed] Order

(Capital Case)

(Hon. Robert Carter Olson)

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17
18 Pending before this Court is the Stipulated Motion for Disclosure Schedule. Good
19 cause appearing,

20 **IT IS ORDERED** that the Stipulated Motion for Disclosure Schedule is
21 **GRANTED.**

22 On **April 27, 2022**, each party shall disclose a list of witnesses and a brief account
23 of the subject matter of each witness' testimony.

24 On **April 27, 2022**, each party shall disclose a CV for any expert witness who will
25 be presented at the hearing.

26 On **April 29, 2022**, each party shall disclose copies of any exhibits which may be
27 offered in the party's case in chief at the hearing.
28

IT IS SO ORDERED this ____ day of _____, 2022.

The Honorable Robert Carter Olson
Pinal County Superior Court

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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF PINAL**

9 STATE OF ARIZONA,

10 Plaintiff,

11 v.

12 CLARENCE WAYNE DIXON,

13 Defendant.
14
15
16

Pinal County Case No. S1100CR202200692

Maricopa County Case No. CR2002-019595

Arizona Supreme Court Case No. CR-08-
0025-AP

Order

(Capital Case)

(Hon. Robert Carter Carter Olson)

17 Pending before this Court is Clarence Wayne Dixon's Motion to Exceed Page Limit
18 on the Reply in Support of Motion to Determine Mental Competency to be Executed. Good
19 cause appearing,

20 **IT IS ORDERED** that the Motion to Exceed Page Limit is Granted.
21
22
23
24
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26
27
28



eSigned by Olson,Robert 04/19/2022 16:13:40 IBSmhx4Z

1 Jon M. Sands
2 Federal Public Defender
3 District of Arizona
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5 *Amanda C. Bass (AL Bar No. 1008H16R)
6 *Eric Zuckerman (PA Bar No. 307979)
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15 *Admitted pro hac vice
16 Counsel for Defendant

17 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
18 **IN AND FOR THE COUNTY OF PINAL**

19 STATE OF ARIZONA,

20 Plaintiff,

21 v.

22 CLARENCE WAYNE DIXON,

23 Defendant.

Pinal County Case No. S1100CR202200692

Maricopa County Case No. CR2002-019595

Arizona Supreme Court Case No. CR-08-0025-AP

MOTION TO EXCEED PAGE LIMIT

(Capital Case)

(Hon. Robert Carter Olson)

24 Clarence Wayne Dixon, through undersigned counsel, respectfully moves this Court
25 for leave to exceed the 6-page limit prescribed under Rule 1.9 of Arizona's Rules of Criminal
26 Procedure in his concurrently filed Reply in Support of Motion to Determine Mental
27 Competency to be Executed ("Reply"). *See* Ariz. R. Crim. P. 1.9. Mr. Dixon's Reply is 8
28 pages, and he therefore respectfully seeks leave to exceed Rule 1.9's 6-page limit by 2 pages.

Mr. Dixon's request is premised on the importance of the issues at stake—and their

Certificate of Service

I hereby certify that on April 18, 2022, I electronically filed the foregoing Motion to Exceed Page Limit with the Pinal Clerk's Office by using the Court's eFiling system. Copies of the foregoing were electronically mailed this date to:

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s/ Jessica Golightly
Assistant Paralegal
Capital Habeas Unit

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8 **IN AND FOR THE COUNTY OF PINAL**

9 STATE OF ARIZONA,

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12 CLARENCE WAYNE DIXON,

13 Defendant.

Pinal County Case No. S1100CR202200692

Maricopa County Case No. CR2002-019595

Arizona Supreme Court Case No. CR-08-
0025-AP

[Proposed] Order

(Capital Case)

(Hon. Robert Carter Olson)

14
15
16
17 Pending before this Court is Clarence Wayne Dixon's Motion to Exceed Page Limit
18 on the Reply in Support of Motion to Determine Mental Competency to be Executed. Good
19 cause appearing,

20 **IT IS ORDERED** that the Motion to Exceed Page Limit is Granted.

21 **IT IS SO ORDERED** this ____ day of _____, 2022.
22
23
24

25
26 _____
The Honorable Robert Carter Olson
Pinal County Superior Court
27
28